

GRANTED ISSUES

NOTE: THE WORDING OF THE ISSUES IS TAKEN VERBATIM FROM THE PARTIES' PETITIONS FOR DISCRETIONARY REVIEW.

NO ISSUES GRANTED MARCH 1, 2017

PDR NO.	NAME	COUNTY	OFFENSE
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ALPHABETICAL LISTING WITHOUT ISSUES

<u>PDR NO.</u>	<u>NAME</u>	<u>DATE GRANTED</u>
15-1252	ALLEN, RODNEY WAYNE	06/08/16
16-0623	ARIZMENDI, ROSA ELENA	09/14/16
15-1648/49	ARTEAGA, ROBERT MICHAEL	04/27/16
15-1409	ASBERRY, DAMON LAVELLE	03/09/16
16-0244	ASH, ANDRE JAMMAR	09/14/16
16-0981	BALKISSOON, KEITH	01/25/17
16-0618	BECK, CLINTON DAVID	09/14/16
16-0365/66	BIEN, MICHAEL JOSEPH	09/14/16
15-0347	BOHANNAN, MICHAEL W.	11/02/16
16-0791	BOLLES, MARK EDWARD	10/05/16
16-0208	BOWMAN, RICHARD MARK	04/06/16
16-1137	BURCH, DAN DALE	01/25/17
16-0576	BURNETT, BURT LEE	09/28/16
16-1012	BUSH, LANNY MARVIN	01/1/17
16-805	CAHILL, DAVID WAYNE	11/09/16
16-0704-06	ELROD, GORDON HEATH	10/19/16
16-0429	ESTES, RUSSELL LAMAR	09/14/16
15-1369	FEBUS, ALBERT JUNIOR	02/03/16
15-1189	FLORES, MAYRA	01/27/16
16-1299	FORD, KIMBERLY	01/25/17
16-0227	GAMINO, CESAR ALEJANDRO	05/25/16
16-1043	GIBSON, JOHNTAY	11/23/16
16-0197	GUTIERREZ, RENE	05/25/16
16-0171	GREEN, CLIFFORD WAYNE	05/04/16
16-1118	HALLMARK, JAMIE	01/25/17
15-0887	HANKSTON, GAREIC JERARD	02/03/16
15-0511	HENRY, ALVIN PETER, JR.	10/07/15
16-1049	HERNANDEZ, TEODORO MIGUEL	02/01/17
16-0703	HOPPER, STEPHEN HENRY	10/19/16
16-0578	INGRAM, ADAM WAYNE	08/24/16
15-0832	JENKINS, JAMES ALAN	09/16/15
15-1566	KNELSEN, ANNA	03/02/16
15-1544	LARUE, JOE EDWARD	04/13/16
16-0517	LEAX, JEROMY JOHN	09/21/16
16-0880	LEE, RONALD EDGAR, JR.	01/11/17
16-1229	LERMA, ERNESTO	01/25/17
15-0984	LONG, WENDEE	11/04/15
16-0931	MARCOPOULOS, ANDREAS	01/25/17
15-1641	McCLINTOCK, BRADLEY RAY	04/27/16
15-0891	MILLER, ARTHUR FRANKLIN, JR.	01/13/16
16-1056	MOORE, HAROLD MICHAEL	12/07/16
16-0061	O'BRIEN, KELVIN LYNN	05/04/16
16-1184	OWINGS, RICHARD CHARLES	02/01/17
15-1682	PARKER, DARRELL WAYNE	05/04/16
15-1671	PENRIGHT, CARLTON CHARLES	04/27/16
16-0771-73	PETE, ANTHONY	09/14/16
16-0677	PEYTON, JEFFREY	09/14/16
16-0712	PRICHARD, ROBERT MONTE	09/28/16
16-1180	PRINE, ALVIN WESLEY, JR.	11/09/16
15-1100	PROENZA, ABRAHAM JACOB	01/13/16
16-0215	QUEEMAN, ROBERT ALAN	05/25/16
16-1300	RAMIREZ-TAMAYO, ELVIS ELVIS	01/25/17
15-1661	RITZ, ROBERT FRANCIS	04/27/16

15-1391	RODRIGUEZ, MIKENZIE RENEE	02/24/16
16-0439	RODRIGUEZ, ROBERT	07/27/16
16-0323-25	SAFIAN, ANTHONY ROBERT	08/24/16
16-0170	SALINAS, ORLANDO	05/25/16
16-1037	SANCHEZ, REINALDO	01/25/17
15-0597	SHORTT, BERNARD WINFIELD	09/16/15
16-0295	THOMAS, CODY LANG	05/25/16
16-0658	ULLOA, MIKE ANGEL	09/14/16
16-0283	VANDYKE, ROGER DALE	07/27/16
16-0228	VELASQUEZ, VICTORIA MARI	06/29/16
16-0541	VILLA, JAIME	10/05/16
15-0659	WAGNER, PAUL HENRI	11/11/15
16-0947	WILLIAMS, JUSTIN TIRRELL	11/02/16
15-1317	ZUNIGA, MARY	01/27/16

NUMERICAL LISTING WITH ISSUES GRANTED

15-0347 **BOHANNAN, MICHAEL W.** **11/02/16**
COURT'S OWN MOTION **MONTGOMERY** **VIOLATING CIVIL**
COMMITMENT ORDER

Can a conviction for violating a civil commitment order be upheld when the underlying commitment order has been reversed on appeal?

15-0511 **HENRY, ALVIN PETER, JR.** **10/07/15**
APPELLANT'S **LAMAR** **EVADING ARREST**

3. When the State failed to properly link Petitioner to the enhancement paragraphs, did the Sixth District Court of Appeals unreasonably hold that Petitioner and Coleman's testimony (showing that Petitioner has been to prison multiple times) is sufficient to uphold the prior enhancement convictions, and is this ruling in conflict with *Prihada v. State* [sic]?

15-0597 **SHORTT, BERNARD WINFIELD** **09/16/15**
APPELLANT'S **DALLAS** **BURGLARY OF A HABITATION**

The Court of Appeals erred when it dismissed Appellant's appeal for want of jurisdiction because: (1) Texas Code of Criminal Procedure Article 44.02 allows appeals from a criminal action, and under this Court's holding in *Bautsch v. Galveston*, 11 S.W. 414 (Tex. Ct. App. 1889), a hearing on a motion for shock probation is a criminal action; and (2) the issue appealed was an unconstitutional imposition of restitution, and not the granting of shock probation itself.

15-0659 **WAGNER, PAUL HENRI** **11/11/15**
APPELLANT'S **DALLAS** **VIOLATING A PROTECTIVE**
ORDER

1. What is the correct definition of the phrase "communicating . . . in a . . . harassing manner" as used in the statute for protective orders in family violence cases, and, as applied in this case, did it penalize protected speech in violation of Petitioner's First Amendment rights? [Tex. Pen. Code § 25.07(A)(1)(A)]
2. Whether this is a "content-based" First Amendment case and ought to have been decided by a different standard of review, "strict scrutiny" as enunciated in the case of *Ex parte Lo*.
3. If strict scrutiny is the proper standard of review, whether the correct standard of review can be waived.

15-0832 **JENKINS, JAMES ALAN** **09/16/15**
STATE'S **MONTGOMERY** **ILLEGAL VOTING**

1. The Court of Appeals Erred in Failing to Affirm the Trial Court's Ruling Denying Appellant's Request for a Section 8.03 Mistake of Law Instruction.
2. The Court of Appeals Erred in Finding that Appellant Was Harmed by the Trial Court's Failure to Provide a Section 8.03 Mistake of Law Instruction.

15-0887 **HANKSTON, GAREIC JERARD** **02/03/16**
APPELLANT'S **HARRIS** **MURDER**

1. Did the Court of Appeals err when it "utilize[d] Fourth Amendment precedent" in determining Art. 1 Section 9 of the Texas Constitution was not violated when the State obtained Appellant's cell phone records without a warrant in light of *Richardson v. State*, 865 S.W.2d [9]44 (Tex. Crim. App. 1993)?

15-0891 **MILLER, ARTHUR FRANKLIN, JR.** **01/13/16**
APPELLANT'S **COLLIN** **AGGRAVATED SEXUAL**
ASSAULT,
INDECENCY WITH A CHILD

Did the Court of Appeals err by finding that trial counsel's deficient performance regarding Appellant's probation eligibility, which Appellant relied upon in waiving his constitutional right to a jury trial, was not prejudicial under *Strickland*?

15-0984
STATE'S

LONG, WENDEE

DENTON

11/04/15
UNLAWFUL INTERCEPTION OF
ORAL COMMUNICATION

1. Does Penal Code section 16.02 prohibit intercepting and disclosing the contents of an oral communication even when the speaker has no expectation that his words will not be repeated by those present?
2. Does a basketball coach have a justifiable expectation that his pep talk in a girls' locker room will not be secretly recorded by a former player?

15-1100
STATE'S

PROENZA, ABRAHAM JACOB
CAMERON

01/13/16
INJURY TO A CHILD

1. Is there a common-law "fundamental error" exception to preservation that exists outside of the framework of *Marin v. State*, 851 S.W.2d 275 (Tex. Crim. App. 1993)?
2. Is a complaint about a judge's comment on the evidence forfeited if not raised at trial?
3. The trial judge's exchange with a witness neither tainted the defendant's presumption of innocence nor vitiated the jury's impartiality, and it was harmless under any standard.

15-1189
APPELLANT'S

FLORES, MAYRA
HARRIS

01/27/16
MURDER

1. The Court of Appeals erred in ruling that the audio recording of Mayra's custodial interrogation was admissible notwithstanding the fact that the recording device used was not capable of making an accurate recording.
2. The Court of Appeals applied the wrong standard in holding that the recording equipment's failure to record twenty minutes of Mayra's custodial interrogation did not amount to an alteration that rendered the recording unreliable and untrustworthy.
3. The Court of Appeals misapplied this Court's holding in *Weatherred* because the audio tape failed to meet the requirements of section three of art. 38.22 and the trial court knew that before its ruling to allow the audio recording into evidence.

15-1252
APPELLANT'S

ALLEN, RODNEY WAYNE
HARRIS

06/08/16
MURDER

1. The majority of the court of appeals erred in holding that Appellant failed to preserve error in the exclusion of evidence of Diles's prior convictions, his physical abuse of Castillo, and his gang membership.
2. The majority of the court of appeals erred in holding that the trial court did not abuse its discretion in excluding evidence of Diles's physical abuse of Castillo, and Diles's gang membership to show that he was the first aggressor, to show the reasonableness of Appellant's apprehension of danger, and to show that Appellant acted in self-defense.
3. The majority of the court of appeals erred in holding that the trial court did not abuse its discretion in excluding evidence of Diles's physical abuse of Castillo after the State opened up the door to its admission.

15-1317
APPELLANT'S

ZUNIGA, MARY
NUECES

01/27/16
TAMPERING WITH
PHYSICAL EVIDENCE

Whether the addition of the term "an unknown substance" is sufficient so as to apprise a defendant of what "thing" was considered "evidence" alleged to have been altered, destroyed or concealed?

15-1369
APPELLANT'S

FEBUS, ALBERT JUNIOR
HARRIS

02/03/16
FAILURE TO REGISTER
AS SEX OFFENDER

The evidence is insufficient to support the conviction for the felony offense of failure to comply with sex offender registration requirements since the evidence conclusively establishes a reasonable doubt as to whether appellant intentionally or knowingly failed to comply with the Texas Sex Offender Registration Program, as charged in the indictment. The Court of Appeals reliance on *Robinson v. State*, No. PD-0421-14, 2015 WL 4068109 (Tex. Crim. App. July 1, 2015) is in error since the indictment required the State to prove, beyond a reasonable doubt, that appellant intentionally or knowingly failed to provide his anticipated move date and new address.

15-1391

RODRIGUEZ, MIKENZIE RENEE

02/24/16

STATE'S**BROWN****POSSESSION OF CONTROLLED
SUBSTANCE**

1. Should a court of appeals consider all of the totality of the circumstances, including (a) who initially searched a dorm room, (b) whether law enforcement had to conduct any additional search beyond a search conducted by university officials, and (c) whether a student consented to university officials searching her room, when determining whether the Fourth Amendment was implicated by law enforcement's actions in entering a dorm room?
2. Should a university's duty to provide a safe environment, with an atmosphere conducive to the educational process, and the minimal intrusion by law enforcement be balanced against a college student's Fourth Amendment rights when determining the reasonableness of a dorm room search?
3. The Court of Appeals erred in categorically ruling that the plain view doctrine did not apply because university administrators cannot have actual or apparent authority to consent to law enforcement's entry into a dormitory room.

15-1409**ASBERRY, DAMON LAVELLE****03/09/16****APPELLANT'S****McLENNAN****MURDER**

The Court of Appeals erred in holding it could not consider the trial Court record when reviewing the Court's findings in a Chapter 64 proceeding, where the record was not formally introduced into evidence at the hearing.

15-1544**LARUE, JOE EDWARD****04/13/16****APPELLANT'S****JEFFERSON****CAPITAL MURDER**

The Court of Appeals erred in failing to properly review the evidence and determine whether there was at least a 51% chance that appellant would not have been convicted if exculpatory results had been available during trial.

15-1566**KNELSEN, ANNA****03/02/16****APPELLANT'S****EL PASO****POSSESSION OF MARIJUANA**

1. By ruling that Anna Knelsen's sworn writ allegations did not constitute a sufficient basis for vacating her conviction, even though the record conclusively establishes that her guilty plea was not knowingly and voluntarily made and that it resulted from ineffective assistance of counsel, the court of appeals has rendered a decision which conflicts with applicable decisions of the Court of Criminal Appeals and U.S. Supreme Court.

15-1641**McCLINTOCK, BRADLEY RAY****04/27/16****STATE'S****HARRIS****POSSESSION OF CONTROLLED
SUBSTANCE**

1. Does the United States Supreme Court's exception to the exclusionary rule, held under *Davis v. United States*, 131 S.Ct. 2419 (2001), apply to Texas' exclusionary rule?
2. If the United States Supreme Court's *Davis* exception to the exclusionary rule, or at least the purpose behind it, applies to Texas' exclusionary rule, the First Court of Appeals erred in excluding evidence obtained legally under binding authority at the time the search warrant was issued.

15-1648**ARTEAGA, ROBERT MICHAEL****04/27/16****15-1649****APPELLANT'S****BURNET****SEXUAL ASSAULT (23 CTS)
POSSESSION OF CHILD
PORNOGRAPHY (17 CTS)**

When a statute, Sec. 22.001(f), Tex. Penal Code Ann. (2011)(sexual assault), creates an element of the offense by citing specifically to another penal statute, Sec. 25.01, Tex. Penal Code Ann. (2001) (bigamy), is it proper to ignore the cited statute and permit conviction based on wholly unrelated non-penal statute, i.e., Sec. 6.201, Texas Family Code (2014) (consanguinity)?

15-1661**RITZ, ROBERT FRANCIS****04/27/16****APPELLANT'S****HAYS****CONTINUOUS TRAFFICKING
OF PERSONS**

1. The court of appeals erred in finding that the evidence was sufficient to prove that petitioner "trafficked" the alleged victim as intended by the statute.

2. The court of appeals erred in finding that the application of the plain language of V.T.C.A. Penal Code, Sec. 20A.01(4) did not lead to an absurd consequence that the legislature could not have intended.

15-1671 **PENRIGHT, CARLTON CHARLES** **04/27/16**
APPELLANT'S **HARRIS** **SEXUAL ASSAULT**

The Court of Appeals' decision that the consolidated court cost was constitutional failed to explain how the comprehensive rehabilitation fee is a legitimate criminal justice purpose.

15-1682 **PARKER, DARRELL WAYNE** **05/04/16**
APPELLANT'S **BELL** **CAPITAL MURDER**

Does transferred intent in a multiple (capital) murder situation preclude a requested lesser-included instruction on manslaughter where the defendant asserts (and there is affirmative evidence supporting the assertion) that he did not intend to kill one or more of the victims? *See Cavazos v. State*, 382 S.W.3d 377 (Tex.Crim.App. 2012).

16-0061 **O'BRIEN, KELVIN LYNN** **05/04/16**
APPELLANT'S **HARRIS** **ENGAGING IN ORGANIZED**
CRIMINAL ACTIVITY

1. Whether the court of appeals erred in holding that unanimity is not required with respect to the enumerated offenses of theft and money laundering in an engaging in organized criminal activity by commission jury charge. (CR at 868-872; 21 RR at 117-120; 29 RR at 45-46).

16-0170 **SALINAS, ORLANDO** **05/25/16**
APPELLANT'S **HARRIS** **INJURY TO AN ELDERLY**
PERSON

1. The Fourteenth Court of Appeals' erred when it held that a court cost for "comprehensive rehabilitation" is expended for a "legitimate criminal justice purpose." The Court of Appeals failed to explain how this "relates to the administration of our criminal justice system." Is this opinion in conflict with *Peraza v. State*?

2. The Fourteenth Court of Appeals' erred when it held that a court cost labeled "abused children's counseling" is a constitutional court cost. The Court of Appeals failed to explain how this cost is "expended" for a "legitimate criminal justice purpose" when the opinion states the money is not statutorily utilized for that purpose. Is this opinion in conflict with *Peraza v. State*?

16-0171 **GREEN, CLIFFORD WAYNE** **05/04/16**
STATE'S **McCLENNAN** **AGGRAVATED SEXUAL ASSAULT**

2. The court of appeals' analysis of ineffective assistance of counsel was tainted by its improper reframing of appellant's issue.

16-0197 **GUTIERREZ, RENE** **05/25/16**
STATE'S **NUECES** **AGGRAVATED ASSAULT**
HARASSMENT OF PUBLIC
SERVANT

Did the court of appeals properly apply either prong of *Strickland v. Washington* when it affirmed a new trial based on defense counsel's allegedly deficient advice to proceed with an 11-member jury?

16-0208 **BOWMAN, RICHARD MARK** **04/06/16**
STATE'S **HARRIS** **DRIVING WHILE INTOXICATED**

1. Upon analyzing the applicability of the equitable doctrine of laches, this Court has established a framework for review under the totality of the circumstances. The court of appeals erred when it did not faithfully apply this framework and, instead, diminished the importance of faded memories and wholly failed to consider appellant's reason for delaying more than seven years in bringing his claim.

2. The court of appeals granted relief for ineffective assistance of counsel because the trial attorney did not investigate the specific stats regarding the detaining officer's overtime pay for impeachment purposes, which it considered a local defense custom. The court of appeals failed to give proper deference to the trial court by ignoring evidence that investigation of this specific officer was not so pervasive as to be a professional standard, failed to actually consider whether such evidence would be admissible, and overlooked that its argument against prejudice on the State's laches claim should preclude prejudice in appellant's ineffective assistance of counsel claim.

16-0215
STATE'S

QUEEMAN, ROBERT ALAN
KINNEY

05/25/16
CRIMINALLY NEGLIGENT
HOMICIDE

1. Is failing to maintain a safe speed and keep a proper distance the sort of "unexplained failure" that this Court suggested in *Tello v. State*, 180 S.W.3d 150 (Tex. Crim. App. 2005), would be unworthy of criminal sanction?
2. Did the court of appeals ignore basic rules of sufficiency review when it disregarded evidence that supported the verdict and drew inferences contrary to those presumably drawn by the jury?

16-0227
STATE'S

GAMINO, CESAR ALEJANDRO
TARRANT

05/25/16
AGGRAVATED ASSAULT

1. Did the court of appeals err in finding that Respondent admitted to threatening his victim, and thereby admitted to committing aggravated assault with a deadly weapon, by testifying he held a gun at his side with the barrel pointed at the ground?
2. Did the court of appeals err by relying on law not applicable to this case in order to reach its holding?
3. Did the court of appeals err when it cited a case as support of an application of law that the case actually held to be error?

16-0228
APPELLANT'S

VELASQUEZ, VICTORIA MARI
BEXAR

06/29/16
POSSESSION OF MARIJUANA

1. Did the State of Texas properly preserve error for lack of notice of a pre-trial hearing pursuant to Tex. Code Crim. Proc. Art 28.01 when in truth they objected merely to the evidentiary character of a pre-trial hearing on a Motion to Suppress?
2. Did the court of appeals err in concluding that Tex. Code Crim Proc. Art 28.01 requires the Trial Court to provide additional notice to the State of the potential for a pre-trial hearing on a properly filed and served Motion to Suppress beyond an order to appear ready for trial on a certain date?

16-0244
APPELLANT'S

ASH, ANDRE JAMMAR
FALLS

09/14/16
POSSESSION OF CONTROLLED
SUBSTANCE W/INTENT TO
DELIVER

The Waco Court of Appeals erred in holding, without formal charges, an accomplice witness can only be classified as a matter of fact and cannot be an accomplice as a matter of law.

16-0283
APPELLANT'S

VANDYKE, ROGER DALE
MONTGOMERY

07/27/16
VIOLATING CIVIL COMMITMENT
ORDER

Did the Court of Appeals err in holding that the savings clause of S.B. 746 violated the Separation of Powers Clause of the Texas Constitution so even though Appellant's appeal was pending when the Texas Legislature amended Chapter 841 Health & Safety Code to decriminalize the conduct for which Appellant was convicted, and since the amendment's would have applied to Appellant since his conviction was not final when the amendments went into effect but for the savings clause being declared unconstitutional Appellant conviction should not have been reversed?

16-0295
STATE'S

THOMAS, CODY LANG
HOPKINS

05/25/16
THEFT

What is the proper remedy when the defendant and the State "charge bargain" for an open plea of guilty to a lesser-included offense and the trial judge imposes an illegal sentence?

16-0323
16-0324
16-0325
APPELLANT'S

SAFIAN, ANTHONY ROBERT
TARRANT

08/24/16
AGGRAVATED ASSAULT
POSSESSION OF HEROIN
EVADING ARREST

The court of appeals erred when it affirmed the trial court's denial of the lesser-included jury charge of deadly conduct in the trial for aggravated assault on a public servant.

16-0365

BIEN, MICHAEL JOSEPH

09/14/16

16-0366

STATE'S & APPELLANT'S

BROWN

**ATTEMPTED CAPITAL MURDER
SOLICITATION TO COMMIT
CAPITAL MURDER**

STATE

1. Did the Eleventh Court of Appeals err by holding that convictions for criminal solicitation and attempted capital murder violate double jeopardy when significant factors indicate a legislative intent to punish these offenses as separate steps in the continuum of a criminal transaction?

2. Assuming a double jeopardy violation, who should determine what the most serious offense is? If this Court answers that question by deciding that a court of appeals should make that determination, what role should the parole consequences of Article 42.12 § 3g have in that analysis when the sentences, fine and restitution are all identical?

APPELLANT

1. The Court of Appeals erred when it held that parole eligibility may determine the "most serious" offense for purposes of double jeopardy.

2. What is the proper remedy for multiple punishment when the "most serious" offense cannot be determined?

16-0429

ESTES, RUSSELL LAMAR

09/14/16

STATE'S & APPELLANT'S

TARRANT

**SEXUAL ASSAULT
INDECENCY W/CHILD**

STATE

Did the Court of Appeals properly conclude that there was no rational basis for the appellant receiving disparate treatment?

APPELLANT

1. Should Appellant's equal protection claim be reviewed under strict scrutiny?

2. Was it error for the Court of Appeals to affirm Appellant's sexual assault convictions as second-degree felonies and remand those charges to the trial court for a new trial on punishment, rather than order the prosecution of Appellant dismissed or remand the charges to the trial court to enter an order dismissing the prosecution?

16-0439

RODRIGUEZ, ROBERT

07/27/16

STATE'S

GUADALUPE

AGGRAVATED ASSAULT

Does the submission of an instruction on transferred intent entitle a defendant to an instruction on mistake of fact even if the greater offense does not have any additional culpable mental state and there is no evidence that the defendant harbored a mistaken belief?

16-0517

LEAX, JEROMY JOHN

09/21/16

APPELLANT'S

MONTGOMERY

**ONLINE SOLICITATION OF
A MINOR**

Whether Section 33.031 of the Texas Penal Code is a content-based restriction.

16-0541

VILLA, JAIME

10/05/16

STATE'S

EL PASO

**ENGAGING IN ORGANIZED
CRIMINAL ACTIVITY**

The Court of Appeals failed to properly apply the appropriate legal-sufficiency standard of review and instead employed the long-disavowed divide-and-conquer approach in its sufficiency-of-evidence analysis, and, within such divide-and-conquer approach, further failed to afford appropriate deference to the jury's resolutions of conflicting inferences from and interpretations of the evidence by speculating and focusing on alternate reasonable hypotheses inconsistent with guilt.

16-0576

BURNETT, BURT LEE

09/28/16

STATE'S

TAYLOR

DWI, UNLAWFULLY

CARRYING A WEAPON

Did the court of appeals misapply this Court's decision in *Ouellette v. State* in determining that the inclusion of the full statutory definition of intoxication in a jury charge constitutes harmful error?

16-0578 **INGRAM, ADAM WAYNE** **08/24/16**
APPELLANT'S **BEXAR** **ONLINE SOLICITATION OF A**
MINOR

Whether the Fourth Court of Appeals erred by failing to recognize and apply the analysis of the United States Supreme Court and this Court's past rulings under the First, Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, the Dormant Commerce Clause, and Article 1 § 19 of the Texas Constitution regarding the unconstitutionality of Texas Penal Code Section 33.021.

16-0618 **BECK, CLINTON DAVID** **09/14/16**
APPELLANT'S **COMAL** **IMPROPER RELATIONSHIP**
BETWEEN EDUCATOR AND
STUDENT

The Court of Appeals held that Mr. Beck had forfeited his right to challenge on habeas review the constitutionality of Texas Penal Code Section 21.12(a)(3), the statute of conviction, because he did not raise the issue at trial or on appeal. In dicta, the lower court implied that if the issue had been preserved, the court would have found the statute constitutional.

16-0623 **ARIZMENDI, ROSA ELENA** **09/14/16**
STATE'S **POTTER** **POSSESSION OF CONTROLLED**
SUBSTANCE W/INTENT TO
DELIVER

Was Appellee entitled to a new trial, as both lower courts held, when she waived the right to seek a new trial and presented no valid legal claim supported by new evidence not previously available or discoverable with due diligence?

16-0658 **ULLOA, MIKE ANGEL** **09/14/16**
APPELLANT'S **MONTGOMERY** **TAMPERING WITH EVIDENCE**

Does Texas Code of Criminal Procedure Article 12.05(b) permit an expansion of the limitation period for a felony offense with the filing of an accusatory pleading other than an indictment, such as a complaint or an information, when Article 12 considered as a whole only articulates a time restriction for an indictment and not a complaint or an information?

16-0677 **PEYTON, JEFFREY** **09/14/16**
STATE'S **WICHITA** **CRIMINAL SOLICITATION**

1. The Second Court of Appeals erred by minimizing the gravity of this offense. The uncontroverted evidence showed Appellant's actus reus and mens rea were identical to a Capital Murder for Hire, except that he hired the wrong hit man. Additionally, the Second Court minimized the community safety threat by ignoring that the person Appellant wanted murdered is still alive and at risk.

2. Rejecting the trial court's implicit finding that Appellant lacked credibility, the Second Court of Appeals deviated from the proper standard of review in holding that the trial court abused its discretion.

16-0703 **HOPPER, STEPHEN HENRY** **10/19/16**
APPELLANT'S & STATE'S **HARRIS** **AGGRAVATED SEXUAL**
ASSAULT

Appellant's

The Court of Appeals erred in finding the twenty-year, post-indictment delay was not a speedy trial violation where the State intentionally declined to bring the appellant from a prison in Nebraska because, according to office policy, filing a detainer fulfilled the State's legal duty.

State's

If the State files a detainer under the Interstate Agreement on Detainers Act, but neither the defendant nor the State exercise their option to force a trial in an expeditious manner, does the resulting period of delay count against the State for purposes of a speedy-trial analysis when the case finally goes to trial?

16-0704	ELROD, GORDON HEATH	10/19/16
16-0705		
16-0706		
STATE'S	DALLAS	FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION; TAMPERING W/GOVERNMENT RECORD

After an informant details an ongoing criminal enterprise and leads the police to her potential co-conspirators, can a magistrate find that her tip establishes a "fair probability" that evidence of the crime will be found where she suggests?

16-0712	PRICHARD, ROBERT MONTE	09/28/16
APPELLANT'S	DALLAS	CRUELTY TO NONLIVESTOCK ANIMAL

Is a "deadly weapon" finding appropriate when the only thing injured or killed is a pit bull rather than a human being?

16-0771	PETE, ANTHONY	09/14/16
16-0772		
16-0773		
STATE'S	DALLAS	AGGRAVATED SEXUAL ASSAULT

A mistrial and a new trial are largely "functionally indistinguishable." Here, the jury reached lawful guilty verdicts, but error tainted the punishment phase after the jury saw Appellant in shackles. Under these facts, a trial court granting a new trial must grant the new trial only as to punishment. Under the same facts, may a trial court instead order a mistrial only as to punishment?

16-0791	BOLLES, MARK EDWARD	10/05/16
STATE'S	NUECES	POSSESSION OF CHILD PORNOGRAPHY

1. The Thirteenth Court of Appeals erred in concluding that the image of a toddler with her genitals exposed, without any discernable reason for the exposure other than to arouse or offend the viewer, did not amount to a "lewd exhibition of the genitals" for purposes of the offense of Possession of Child Pornography. (Thirteenth Court of Appeals Opinion. pp. 14-15)

2. Does Rosie's toddler status in 1976 when Robert Mapplethorpe photographed her revealing her genitals control the "child younger than 18. . . when the image was made" element of possession of child pornography when, long after Rosie reached adulthood, Appellant took a "cropped" photo of the original depicting only her genitalia?

16-0805	CAHILL, DAVID WAYNE	11/09/16
STATE'S	COLLIN	AGGRAVATED ROBBERY

1. Is a theory of law offered to prove a violation of the Interstate Agreement on Detainers Act timely presented if made for the first time in a motion for new trial?

2. Is a county employee who retrieves the prosecuting officer's mail its agent for service of an inmate's request for trial under the Interstate Agreement on Detainers Act?

3. Does a trial court abuse its discretion by failing to believe testimony or draw inferences contrary to its ruling?

16-0880	LEE, RONALD EDGAR, JR.	01/11/17
APPELLANT'S	TAYLOR	CONTINUOUS SEXUAL ABUSE OF CHILD

The 11th Court of Appeals panel erred by not addressing Appellant's argument in Appellant's Issue Number Two that evidence of an act committed in another state which did not violate a Texas Penal law at the time of its commission, did not provide sufficient evidence to fulfil the statutory requirement that the state prove Appellant violated certain

enumerated Texas Penal Laws two or more times during a specified period of time. A plain reading of the statute, Texas Penal Code §21.02, requires that each act must be proven to have been a violation of one of the penal laws enumerated in §21.02 at the time of its occurrence for that act to be used as one of the two or more acts required to prove Continuous Sexual Abuse. By omitting analysis of this issue, which was properly raised in Appellant's brief, the Appellate Court committed error.

16-0931	MARCOPOULOS, ANDREAS	01/25/17
APPELLANT'S	HARRIS	POSSESSION OF CONTROLLED SUBSTANCE

Whether there was probable cause to search Appellant's vehicle under the automobile exception to the warrant requirement when he entered a bar where narcotic activity was suspected, left three to five minutes later, and made "furtive glances" when police surrounded him to make a traffic stop?

16-0947	WILLIAMS, JUSTIN TIRRELL	11/02/16
APPELLANT'S	HARRIS	AGGRAVATED ROBBERY; AGGRAVATED KIDNAPPING; AGGRAVATED SEXUAL ASSAULT

2. This ground of review assumes that a separate \$5 court cost for releasing a defendant from jail is appropriate. The Court of Appeals upheld the trial court's assessment of a \$5 cost for "release" because the defendant was "released" to prison. Did the Court of Appeals err in affirming the assessment of a cost for "release" when the defendant was "released" to prison?

3. This ground of review assumes that a \$5 cost for releasing a defendant to prison is appropriate. Costs for peace officer services are to be assessed for services performed "in the case." The Court of Appeals upheld the trial court's assessment of a \$5 cost even though the sheriff released Mr. Williams to prison following trial. Did the Court of Appeals err in upholding the cost assessment because the release occurred after the trial concluded?

4. This ground of review assumes a \$5 cost for releasing a defendant to prison is appropriate even though the release occurs after trial. The Court of Appeals upheld the \$5 cost's assessment even though there had been no release at the time the bill of costs was prepared. Did the Court of Appeals err in affirming the assessment of a cost for which a service had not yet been performed?

16-0981	BALKISSOON, KEITH	01/25/17
APPELLANT'S	WILLIAMSON	DRIVING WHILE INTOXICATED

2. Did the court of appeals err in finding exigent circumstances existed?

3. Can law enforcement create their own exigent circumstances?

16-1012	BUSH, LANNY MARVIN	01/11/17
STATE'S	COLEMAN	CAPITAL MURDER

1. In reviewing sufficiency of the evidence, did the court of appeals err by:

- failing to consider any reasonable inferences that could be drawn from the evidence,
 - separating evidence about the crime scene from evidence about the relationship between Appellant and the victim as a whole,
 - speculating on evidence that was not offered by the State, and
 - speculating on a hypothesis that was inconsistent with the defendant's guilt,
- during its review of the sufficiency of the evidence to support a capital allegation that Appellant committed murder while in the course of kidnapping or attempting to kidnap the victim?

2. In considering the "grey area" of criminal attempt law between acts that are simply mere preparation to commit an offense and acts that tend to effect the commission of an offense, may a reviewing court reject a jury's verdict during a sufficiency of the evidence review simply because the reviewing court would have drawn the "imaginary line" in a different location than the jury?

16-1037	SANCHEZ, REINALDO	01/25/17
STATE'S	HIDALGO	POSSESSION OF CONTROLLED SUBSTANCE

The Thirteenth Court of Appeals erred in its application of *Arizona v. Gant*, in that it did not apply the totality of the circumstances when determining the validity of the search incident to arrest.

16-1043 GIBSON, JOHNTAY
APPELLANT'S

HARRIS

11/23/16
CAPITAL MURDER

When the basis for trial counsel's objection to the admission of the appellant's videotaped custodial statement was apparent at trial, the reviewing court should not avoid addressing that apparent issue by holding the appellant's argument on appeal does not comport with counsel's trial objection merely because the apparent issue is more specifically articulated on appeal.

16-1049 HERNANDEZ, TEODORO MIGUEL
STATE'S HAYS

02/01/17
SEXUAL ASSAULT;
AGGRAVATED ASSAULT

1. Is the evidence sufficient to prove aggravated assault with a deadly weapon when the State proves the offense alleged in the indictment, but there is a variance between the pleading and proof as to the specific deadly weapon?
2. If, in the course of a single criminal episode, Appellant assaults the victim, immediately leaves the room to retrieve a deadly weapon and then continues assaultive conduct, does a Court of Appeals err in finding the evidence insufficient to prove that the deadly weapon was used "during the commission" of the assault?

16-1056 MOORE, HAROLD MICHAEL
STATE'S TARRANT

12/07/16
DRIVING WHILE INTOXICATED

1. Did the Second Court of Appeals err in misapplying the Jackson v. Virginia legal sufficiency standard by holding evidence the Appellant was intoxicated, caused a wreck with a stationary occupied vehicle, and disregarded a red light was legally insufficient to support a finding the Appellant's vehicle was a deadly weapon?
2. Did the Second Court of Appeals err in holding that the infliction of minor injuries or "bodily injury" by the Appellant's vehicle rendered any actual danger of causing death or serious bodily injury purely hypothetical and thus insufficient to support a deadly weapon finding?
3. Does a deadly weapon finding in a felony driving while intoxicated conviction require a mens rea of reckless conduct?

16-1118 HALLMARK, JAMIE
STATE'S HOUSTON

01/25/17
HINDERING APPREHENSION
OR PROSECUTION

1. Appellant failed to preserve any of the complaints which underlie the court of appeals' opinion.
2. Did the court of appeals misinterpret the record and thus misapply *Moore v. State*, 295 S.W.3d 329, 332 (Tex. Crim. App. 2009), which held that judges may not play any role in plea negotiations?
3. Should *Moore* be reconsidered and appellant be estopped from complaining in this case?

16-1137 BURCH, DAN DALE
STATE'S MONTGOMERY

01/25/17
SEXUAL ASSAULT

1. The Ninth Court of Appeals misapplied the standard set forth in *Riley v. State*, 378 S.W.3d 453 (Tex. Crim. App. 2012), when it ignored the trial court's ability to disbelieve the affidavits provided in support of the appellant's motion for new trial and concluded the appellant established he would have elected for the jury to assess punishment if he had received correct advice regarding his ineligibility for community supervision from the trial court.
2. The Ninth Court of Appeals misapplied the *Strickland v. Washington*, 466 U.S. 668 (1984), standard for evaluating ineffective assistance of counsel claims when the court burdened the State to disprove prejudice and relied on speculation to conclude that the outcome of the trial would have been different if the appellant had received correct advice.

16-1180 PRINE, ALVIN WESLEY, JR.
STATE'S LIBERTY

11/09/16
SEXUAL ASSAULT

1. When the record is silent as to defense counsel's reasons for calling witnesses in support of jury-ordered probation, has the presumption of reasonable strategy been rebutted?

2. If the reasonableness presumption was rebutted, did defense counsel render ineffective assistance in calling witnesses who presented favorable evidence but also opened the door for damaging evidence?

16-1184
STATE'S

OWINGS, RICHARD CHARLES
HARRIS

02/01/17
AGGRAVATED SEXUAL
ASSAULT

The trial court's failure to require an election by the State should not have resulted in a reversal when the testimony regarding multiple incidents of abuse was admissible, the descriptions of each incident were essentially the same, the jury was charged on only one offense, and appellant's defense was the same across the board.

16-1229
STATE'S

LERMA, ERNESTO
NUECES

01/25/17
POSSESSION OF CONTROLLED
SUBSTANCE

When the cocaine was seized after Appellant attempted to flee a reasonably timed traffic-stop-detention, does an alleged unlawful pre-arrest frisk and prolonged detention render the cocaine inadmissible?

16-1299
STATE'S

FORD, KIMBERLY
NUECES

01/25/17
POSSESSION OF CONTROLLED
SUBSTANCE

1. Whether a shopper's concealing merchandise inside her purse in a shopping cart gives rise to probable cause to arrest her for theft?
2. Whether a Suspect's innocent but unverifiable explanation for otherwise highly suspicious conduct negates probable cause? In particular, whether a shopper's claim that she intended to pay for items concealed in her purse while shopping negates probable cause to arrest her for theft?

16-1300
STATE'S

RAMIREZ-TAMAYO, ELVIS ELVIS
POTTER

01/25/17
POSSESSION OF CONTROLLED
SUBSTANCE

1. The court of appeals ignored the law governing the review of suppression rulings by, inter alia, considering the circumstances in isolation, focusing on their innocent nature, and generally failing to defer to the fact-finder.
2. Under what circumstances is a reviewing court permitted to ignore a credible officer's inferences and deductions based on his training and experience?